

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL HALLMARK,

Plaintiff,

vs.

ANSWER WITH JURY DEMAND

Case No.: 11:CV 0842

COHEN & SLAMOWITZ, LLP, and
MIDLAND FUNDING LLC d/b/a
MIDLAND FUNDING OF DELAWARE LLC

Defendants.

Defendant, COHEN & SLAMOWITZ, LLP, by and through its attorneys, Smith, Sovik, Kendrick & Sugnet, P.C., hereby answers plaintiff's Complaint as follows:

1. Paragraph "1" of plaintiff's Complaint contains plaintiff's characterization of his Complaint. No response is required. To the extent a response is required, defendant **ADMITS** that plaintiff brings this action pursuant to 15 U.S.C. §1692 et seq.

2. **ADMITS** the allegations contained in paragraph "2" of plaintiff's Complaint.

3. **ADMITS** the allegations contained in paragraph "3" of plaintiff's Complaint.

4. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of plaintiff's Complaint.

5. **ADMITS** the allegations contained in paragraph "5" of plaintiff's Complaint.

6. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of plaintiff’s Complaint.

7. **ADMITS** the allegations contained in paragraph “7” of plaintiff’s Complaint insofar as the allegations pertain to the answering defendant. Otherwise defendant **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations.

8. Paragraph “8” of plaintiff’s Complaint contains conclusions of law. No response is required.

9. Paragraph “9” of plaintiff’s Complaint contains plaintiff’s characterization of his Complaint. No response is required.

10. Paragraph “10” of plaintiff’s Complaint contains conclusions of law. The nature of the relationship between defendant and co-defendant is one for either the court or the trier of fact to determine.

11. Paragraph “11” of plaintiff’s Complaint contains conclusions of law. The nature of the relationship between defendant and co-defendant is one for either the court or the trier of fact to determine.

12. **ADMITS** the allegations contained in paragraph “12” of plaintiff’s Complaint.

13. **ADMITS** the allegations contained in paragraphs “13” of plaintiff’s Complaint.

14. **ADMITS** the allegations contained in paragraphs "14" of plaintiff's Complaint.

15. **DENIES** the allegations contained in paragraph "15" of plaintiff's Complaint except **ADMITS** that defendant was retained to attempt on a known and valid debt owed to another.

16. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "16" of plaintiff's Complaint.

17. **DENIES KNOWLEDGE OR INFORMATION** sufficient to form a belief as to the truth of the allegations contained in paragraph "17" of plaintiff's Complaint.

18. **DENIES** the allegations contained in paragraph "18" of plaintiff's Complaint.

19. **REPEATS and REALLEGES** the admissions and denials as set forth hereinabove contained in paragraph "19" of plaintiffs' Complaint.

20. **DENIES** the allegations contained in paragraph "20" of plaintiff's Complaint.

21. **DENIES** the allegations contained in paragraph "21" of plaintiff's Complaint.

22. **DENIES** the allegations contained in paragraph "22" of plaintiff's Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

23. That whatever damages may have been sustained at the time and place alleged in the complaint by plaintiff was caused, in whole or in part, by the culpable conduct of the plaintiff and must be reduced proportionally to the culpable conduct of the plaintiff.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

24. That one or more causes of action in the complaint fail to state a cause of action upon which relief may be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

25. Plaintiff has failed to mitigate his alleged damages claimed herein.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

26. Defendant did not violate, in whole or in part, any provision of the FDCPA or any other provision or statute.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

27. To the extent that a violation of 15 U.S.C. §1692 may later be determined to have occurred, such violation was not intentional and resulted from a bona fide error notwithstanding reasonable procedures adopted to avoid any such error.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

28. Plaintiff is precluded by the doctrine of waiver and estoppel.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

29. Any damages claimed are barred and/or circumscribed by 15 U.S.C. §1692(k).

JURY DEMAND

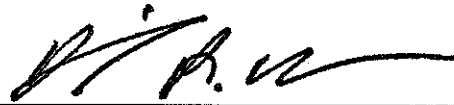
30. Demand is made for a jury trial on all issues.

WHEREFORE, defendant, COHEN & SLAMOWITZ, LLP, demand judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: November 14, 2011.

SMITH, SOVIK, KENDRICK & SUGNET, P.C.

By: _____



Daniel R. Ryan, Esq.
Attorneys for Defendant
Cohen & Slamowitz, LLP
250 South Clinton Street, Suite 600
Syracuse, New York 13202
Telephone: 315-474-2911

TO: Seth J. Andrews, Esq.
Law Offices of Kenneth Hiller, PLLC
Attorneys for Plaintiff
6000 North Bailey Ave., Suite 1A
Amherst, New York 14226
Telephone: 716-564-3288
sandrews@kennethhiller.com